

Senate Bill 95

By: Senators Unterman of the 45th, Thomas of the 54th, Chapman of the 3rd, Butler of the 55th and Tate of the 38th

**AS PASSED SENATE**

**A BILL TO BE ENTITLED  
AN ACT**

To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to establish that it is an unfair trade practice to fail to consider the suitability of insurance for a person 65 years of age or older; to provide for requirements for the solicitation, negotiation, and procurement of annuity contracts; to provide for applicability; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended in subsection (b) of Code Section 33-6-4, relating to unfair methods of competition and unfair or deceptive acts or practices prohibited, by striking "or" at the end of paragraph (14.1), by striking the period and inserting "; or" at the end of paragraph (15), and by adding a new paragraph to read as follows:

"(16) An insurer, either directly or through its agent, recommending to a consumer 65 years of age or older that such consumer purchase any fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity, without having reasonable grounds for believing that such recommendation is suitable for such consumer and without making reasonable inquiries to determine suitability. The suitability of a recommended annuity purchase shall be determined by reference to the totality of the particular consumer's circumstances, including, but not limited to, the consumer's income, the consumer's need for an annuity, and the values, benefits, and costs of the consumer's existing investment program or other insurance products, if any, when compared to the values, benefits, and costs of the recommended annuity or annuities."

**SECTION 2.**

Said title is further amended in Chapter 28, relating to annuity and pure endowment contracts, by adding a new Code section to read as follows:

"33-28-8.

(a) This Code section shall apply to any recommendation to purchase or exchange an annuity made to a consumer 65 years of age or older by an insurance producer, or an insurer where no insurance producer is involved, that results in the purchase or exchange recommended.

(b) Unless otherwise specifically included, this Code section shall not apply to recommendations involving:

(1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this Code section;

(2) Contracts used to fund:

(A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(B) A plan described by Sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;

(C) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

(D) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(E) Settlements or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(F) Formal prepaid funeral contracts.

(c) As used in this Code section, the term:

(1) 'Annuity' means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

(2) 'Insurance producer' means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities.

(3) 'Insurer' means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

(4) 'Recommendation' means advice provided by an insurance producer, or an insurer where no insurance producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

(5) 'Senior consumer' means a person 65 years of age or older. In the event of a joint purchase by more than one party, the purchaser shall be considered a senior consumer if any one of the parties is 65 years of age or older.

(d)(1) When making a recommendation to a senior consumer to purchase or exchange an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no insurance producer is involved, shall have reasonable grounds for believing that such recommendation is suitable for such senior consumer on the basis of facts disclosed by such senior consumer as to his or her investments and other insurance products and his or her financial situation and needs.

(2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no insurance producer is involved, shall make reasonable efforts to obtain information concerning:

(A) The senior consumer's financial status;

(B) The senior consumer's tax status;

(C) The senior consumer's investment objectives; and

(D) Such other information used or considered to be reasonable by the insurance producer, or the insurer where no insurance producer is involved, in making recommendations to the senior consumer.

(3)(A) Except as provided under subparagraph (B) of this paragraph, neither an insurance producer, nor an insurer where no insurance producer is involved, shall have any obligation to a senior consumer under paragraph (2) of this subsection related to any recommendation if a senior consumer:

(i) Refuses to provide relevant information requested by the insurer or insurance producer;

(ii) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

(iii) Fails to provide complete or accurate information.

(B) An insurer or insurance producer's recommendation subject to subparagraph (A) of this paragraph shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

(4)(A) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this Code section is established and maintained by complying with subparagraphs (C) through (E) of this paragraph or shall establish and maintain such a system, including, but not limited to:

(i) Maintaining written procedures; and

(ii) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this Code section.

(B) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this Code section or shall establish and maintain such a system, including, but not limited to:

(i) Maintaining written procedures; and

(ii) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this Code section.

(C) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by subparagraph (A) of this paragraph with respect to insurance producers under contract with or employed by such third party.

(D) An insurer shall make reasonable inquiry to assure that the third party contracting under subparagraph (C) of this paragraph is performing the functions required under subparagraph (A) of this paragraph and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by:

(i) Annually obtaining a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

(ii) Based on reasonable selection criteria, periodically selecting third parties contracting under subparagraph (C) of this paragraph for a review to determine whether such third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

(E) An insurer that contracts with a third party pursuant to subparagraph (C) of this paragraph and that complies with the requirements to supervise in subparagraph (D) of this paragraph shall have fulfilled its responsibilities under subparagraph (A) of this paragraph.

(F) An insurer, general agent, or independent agency shall not be required by subparagraph (A) or (B) of this paragraph to:

(i) Review, or provide for the review of, all insurance producer solicited transactions; and

(ii) Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent, or independent agency.

(G) A general agent or independent agency contracting with an insurer pursuant to subparagraph (C) of this paragraph shall promptly, when requested by the insurer pursuant to subparagraph (D) of this paragraph, give a certification as described in subparagraph (D) of this paragraph or give a clear statement that it is unable to meet the certification criteria.

(H) No person shall provide a certification under division (i) of subparagraph (D) of this paragraph unless:

(i) The person is a senior manager with responsibility for the delegated functions; and

(ii) The person has a reasonable basis for making the certification.

(5) Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this Code section for the recommendation of variable annuities to senior consumers. However, nothing in this paragraph shall limit the Commissioner's ability to enforce the provisions of this Code section.

(e)(1) The Commissioner may order:

(A) An insurer to take reasonably appropriate corrective action for any senior consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;

(B) An insurance producer to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this Code section; and

(C) A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale of, annuities to senior consumers to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this Code section.

(2) Any applicable penalty under Code Section 33-2-24 for a violation of this Code section may be reduced or eliminated if corrective action for the senior consumer was taken promptly after a violation was discovered.

(f)(1) Insurers, general agents, independent agencies, and insurance producers shall maintain or be able to make available to the Commissioner records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions for ten years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

(2) Records required to be maintained by this Code section may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

172 **SECTION 3.**  
173 All laws and parts of laws in conflict with this Act are repealed.

All laws and parts of laws in conflict with this Act are repealed.